



**MCI Communications
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May 4, 1998

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VIA HAND DELIVERY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Submission in CC Docket No. 97-231; CC Docket No. 97-121; CC Docket No. 97-208; CC Docket No. 97-137

Dear Ms. Salas:

On May 4, 1998, MCI submitted the attached cover letter and document entitled "Relationship Between Bell Atlantic-New York's Section 271 Prefiling Statement and MCI's Interconnection Agreement" to Kyle Dixon, legal advisor to Commissioner Powell.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(2) of the Commission's rules.

Sincerely,

Keith L. Seat

Attachment

cc: Kyle Dixon



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May 4, 1998

VIA HAND DELIVERY

Kyle D. Dixon, Esq.
Legal Advisor
Office of Commissioner Michael Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Dear Kyle:

Attached is the memorandum, entitled "Relationship Between Bell Atlantic-New York's Section 271 Prefiling Statement and MCI's Interconnection Agreement," that Mary Brown and I promised you when we met last month. Please give us a call with any questions.

Best regards.

Sincerely,

Keith L. Seat

Attachment

**RELATIONSHIP BETWEEN BELL ATLANTIC-NEW YORK'S
SECTION 271 PREFILING STATEMENT AND
MCI'S INTERCONNECTION AGREEMENT**

The Bell Atlantic-New York Prefiling Statement filed on April 6, 1998 with the New York Public Service Commission contains numerous commitments to perform activities and meet deadlines in order to promote competition in New York local telecommunications markets. The Prefiling Statement purports to set forth what BA-NY must demonstrate to the New York PSC before receiving a favorable recommendation from the PSC to the Federal Communications Commission on a § 271 application.

The Prefiling Statement does not seek to alter BA-NY's contractual obligations to MCI and other CLECs which have an interconnection agreement with BA-NY. Both because the commitments in the Prefiling Statement overlap the interconnection agreements and because of uncertainties surrounding the terms and enforceability of the Prefiling Statement, it is important to examine the relationship and commitments of the Prefiling Statement and MCI's preexisting Interconnection Agreement ("Agreement") with BA-NY.

It must be noted at the outset, however, that this brief analysis does not describe the many shortcomings of the Prefiling Statement, nor does it address the procedural defects of the process leading to the Prefiling Statement. Similarly, this analysis does not address the regulatory environment and extensive prior commitments made by BA-NY in the context of the § 271 proceedings that predate and underlie the Prefiling Statement. Finally, this analysis does not address the effect that various other legal proceedings (including breach of contract claims at the PSC, complaints at the FCC for failure to comply with Bell Atlantic - NYNEX merger

conditions, and the like) may have on the validity and enforceability of provisions of MCI's Agreement or the Prefiling Statement.

Enforceability of Commitments in the Prefiling Statement and MCI's Agreement

BA-NY sought to condition its commitments in the Prefiling Statement on the grant of a § 271 application and upon CLEC acceptance of all terms of the Prefiling Statement. Those commitments are not -- and lack any indication that they will be -- reduced to contract or tariff terms that CLECs can rely upon in making business plans or that regulators can enforce. Because the commitments in the Prefiling Statement appear on their face to be unenforceable, it is unclear at this time how the Prefiling Statement binds BA-NY to its terms.

On the other hand, nothing in the Prefiling Statement suggests that MCI's Agreement is not in full force and effect, nor could BA-NY unilaterally alter its contractual obligations in this manner. Accordingly, MCI's Agreement remains unchanged, with its full range of contractual and regulatory remedies available to MCI. In instances where the terms of MCI's Agreement are more favorable than those of the Prefiling Statement, as described below, BA-NY must comply with the terms of MCI's Agreement or be subject to appropriate remedies.

Key Provisions of MCI's Agreement Missing from the Prefiling Statement

BA-NY did not commit in the Prefiling Statement to key obligations with which it must comply under its binding Interconnection Agreement with MCI, as illustrated by the following examples.

1) Combinations of Network Elements

MCI's Agreement unequivocally requires BA-NY to provide full combinations of network elements (called "platform" in the Prefiling Statement) to MCI at cost-based rates with

no additional charges. BA-NY has refused to comply with this provision of MCI's Agreement, and MCI has an enforcement proceeding pending before the New York PSC.

The complex provisions of the Prefiling Statement concerning combinations of network elements do not track MCI's Agreement in any way. Those aspects of the Prefiling Statement that purport to impose additional charges on competitors seeking to use combinations of elements and limiting the availability of combinations of elements to certain time periods, types of customers and geographic locations all flatly contradict MCI's Agreement with BA-NY.

2) Interconnection, Collocation, and Unbundled Network Elements

MCI's Agreement requires BA-NY to provide MCI with access to interconnection and certain network elements on terms that are in some instances more favorable than the provisions of the Prefiling Statement. Key examples include:

- ▶ Remote switching units. MCI's Agreement obligates BA-NY to permit MCI to install remote switching units at its collocation sites. The Prefiling Statement does not address this issue.
- ▶ Additional collocation terms and conditions. An ongoing docket before the NY PSC concerning collocation terms and conditions will likely result in additional obligations on BA-NY concerning collocation that will be incorporated into MCI's Agreement. The Prefiling Statement does not address any of these additional terms and conditions.
- ▶ Loop intervals. Both the Prefiling Statement and MCI's Agreement obligate BA-NY to adhere to standard intervals for loop provisioning, but on differing terms. According to the Prefiling Statement, the provisioning interval for loop orders in excess of 10 lines must be negotiated. However, MCI's Agreement specifies definite intervals for up to 50 lines and only requires orders in excess of 50 loops to be negotiated, which is a far more favorable term for MCI's customers.

In these cases, where MCI is clearly entitled to a particular network element or service on terms and conditions more favorable than those set forth in the Prefiling Statement, BA-NY must provide the item in question in accordance with the terms of MCI's Agreement. The Prefiling

Statement notwithstanding, BA-NY's failure to do so should be an important factor in evaluating any BA-NY application pursuant to § 271.

Provisions of the Prefiling Statement that Amplify MCI's Agreement

Numerous provisions in the Prefiling Statement describe additional BA-NY obligations in a facial effort to help open New York local markets to competition. While many of the commitments in the Prefiling Statement are intended for the multi-CLEC environment of a § 271 proceeding, others add further detail to matters that are already included in MCI's Agreement. If the Prefiling Statement is to have any meaningful impact on opening New York markets to competition, CLECs such as MCI must be able to depend on the Prefiling Statement and enforce provisions that exceed or amplify the terms of interconnection agreements with BA-NY.

Examples include:

- ▶ **Account Services.** The "Account Services" section of the Prefiling Statement contains numerous specific commitments that are not found in MCI's Agreement. For example, the requirement that BA-NY account managers interact with other BA-NY units on behalf of a CLEC to provide parity with the way in which BA-NY handles large retail accounts is not part of MCI's Agreement. In general, MCI's Agreement does not bind BA-NY to particular types of internal procedures, but only seeks to hold BA-NY to a certain level of service. Many of the commitments in the Prefiling Statement are for the benefit of the CLEC community generally, and while the specific terms are not particularly transferable to an individual CLEC such as MCI, MCI is entitled to benefit from those terms.
- ▶ **Interconnection, Collocation, and Unbundled Network Elements.** In the Prefiling Statement, BA-NY makes numerous commitments to resolve longstanding problems of competitors seeking interconnection, collocation, and access to unbundled network elements. To the extent that those commitments exceed what is found in MCI's Agreement, MCI should be entitled to utilize and enforce them. For example, the Prefiling Statement obligates BA-NY to eliminate all interconnection trunk back orders by June 1, 1998, while MCI's Agreement does not address this issue. BA-NY must be held to the June 1 deadline. Similarly, the Prefiling Statement requires BA-NY to prove its ability to meet a 105-day interval for virtual collocation; MCI's Agreement does not address this issue.

- Operations Support Systems ("OSS"). The OSS section of the Prefiling Statement does not bear a great deal of resemblance to the OSS provisions in MCI's Agreement. In many respects MCI's Agreement is more detailed, particularly concerning the precise OSS features and functions that BA-NY must make available to MCI. The Prefiling Statement, however, purports to put in place a detailed implementation and testing schedule of a type that was expressly not made a part of MCI's Agreement. For example, the Prefiling Statement commits BA-NY to develop application-to-application interfaces for pre-ordering and ordering to be verified in an independent third-party test. The Prefiling Statement commits BA-NY to work with CLECs in the OSS collaborative to develop and design any criteria and business rules that are not yet completed. These are also important commitments that must be enforced for the development of local competition in New York.

In short, the Prefiling Statement contains various provisions that go beyond BA-NY's interconnection agreements. These provisions must be fully implemented and enforced in order to have a possibility of sufficiently opening local markets in New York to competition so that a § 271 application could ultimately be approved.

May 4, 1998